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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,549	07/27/2001	Cherisse Morgan	3052M	8575

7590 12/15/2003
S. Michael Bender
P.O. Box 530399
St. Petersburg, FL 33747

EXAMINER

EDELL, JOSEPH F

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 12/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/916,549

Applicant(s)

MORGAN ET AL.

Examiner

Joseph F Edell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4 and 6-14 is/are pending in the application.
- 4a) Of the above claim(s) 12-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 6-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 18 November 2003 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "at least a first pair of first cushion attachment straps" in lines 31-32 is indefinite because it is unclear whether the limitation refers to the previously recited "first upper cushion attachment straps" in lines 5-6 or attempts to define straps distinct from the first upper cushion attachment straps.

Regarding claim 1, the phrase "at least a first pair of second cushion attachment straps" in lines 33-34 is indefinite because it is unclear whether the limitation refers to

the previously recited "second upper cushion attachment straps" in line 13 or attempts to define straps distinct from the second upper cushion attachment straps.

Regarding claim 1, the phrase "at least a second pair of first cushion attachment straps" in lines 37-38 is indefinite because it is unclear whether the limitation refers to the previously recited "first lower cushion attachment straps" in line 11 or attempts to define straps distinct from the first lower cushion attachment straps.

Regarding claim 1, the phrase "at least a second pair of second cushion attachment straps" in lines 39-40 is indefinite because it is unclear whether the limitation refers to the previously recited "second lower cushion attachment straps" in line 15 or attempts to define straps distinct from the first lower cushion attachment straps.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 and 9, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,112,956 to Schick et al. in view of U.S. Patent No. 4,694,511 to Estes et al.

Schick et al. disclose a cushion apparatus that is basically the same as that recited in claims 1 and 9, as best understood, except that the apparatus lacks second cushion attachment straps that attach to each other under a lounge chair, as recited in

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the claims. Figures 1-6 of Schick et al. show a cushion apparatus having an upper body cushion 21 (Fig. 2) with a neck-cushion-reception channel 24a (Fig. 5) and first upper cushion attachment straps 30 (Fig. 2), a flexible hinge 22 (Fig. 2), and a lower body cushion 20 (Fig. 1) with first lower cushion attachment straps (see column 3, lines 20-21). Estes et al. show a cushion apparatus similar to that of Schick et al. wherein apparatus has a stretch fabric 10 (Fig. 1) including an upper body portion 17 (Fig. 6), upper attachment straps 18 (Fig. 6), a lower body portion 16 (Fig. 6), and lower attachment straps 19 (Fig. 6) wherein the upper and lower attachment straps are adapted to affix the upper body portion and lower body portion to a lounge chair (Fig. 6) by being employed in pairs attachable to each other underneath the rails of the lounge chair. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cushion apparatus of Schick et al. such that the upper and lower body cushion portions have second upper and lower attachment straps adapted to affix the upper and lower body cushion portions by being employed in pairs attachable to each other underneath the rails of the lounge chair, such as the cushion apparatus disclosed in Estes et al. One would have been motivated to make such a modification in view of the suggestion in Estes et al. that the attachment straps allow the apparatus to be additionally attached to a vehicle seat to prevent unwanted wetting of the vehicle seat as well as to attach to a user's body to provide added apparel to lightly clad users.

6. Claims 3, 4, 10, and 11, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Schick et al. in view Estes et al. as applied to claims 1 and

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9, as best understood above, and further in view of U.S. Patent No. 6,068,342 to Mariani et al.

Schick et al., as modified, disclose a cushion apparatus that includes all the limitations recited in claims 3, 4, 10, and 11, as best understood, except the neck-cushion-reception channel lacks a neck cushion and a recliner chair frame assembly with an auxiliary frame member, as recited in the claims. Mariani et al. show a cushion apparatus similar to that of Schick et al. wherein the upper body cushion 100 (Fig. 1) has a neck-cushion-reception channel 120 (Fig. 1) with a neck cushion 202 (Fig. 2) having a bottom cushion portion and a top cushion portion, as well as a recliner chair frame assembly having legs 408 (Fig. 4), a lower frame member 504 (Fig. 5) with connection straps 508 (Fig. 5), frame orientation assemblies 510 (Fig. 5), an upper frame member 502 (Fig. 5) with connection straps 506 (Fig. 5), and an auxiliary frame member 136 (Fig. 2) with a beverage holder (see column 4, lines 26-28). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the cushion apparatus of Schick et al. such that the neck-cushion-reception channel has a neck cushion with top and bottom cushions as well as have a recliner chair frame assembly having lower and upper frame members with connection straps, frame orientation assemblies, and an auxiliary frame member with a beverage holder, such as the cushion apparatus disclosed in Mariani et al. One would have been motivated to make such a modification in view of the suggestion in Mariani et al. that the neck cushion provides head support.

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7. Claims 6-8, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Schick et al. in view Estes et al. as applied to claims 1 and 9, as best understood above, and further in view of U.S. Patent No. 5,237,713 to Prager.

Schick et al., as modified, disclose a cushion apparatus that includes all the limitations recited in claims 6-8, as best understood, except the cushion lacks a cylindrical lumbar cushion attached via hook-or-loop connectors, as recited in the claims. Prager shows a cushion apparatus similar to that of Schick et al. wherein the cushion apparatus has a cylindrical lumbar cushion 42 (Fig. 1) attached by hook-or-loop connectors 64,66 (Fig. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the cushion apparatus of Schick et al. such that the apparatus has a cylindrical lumbar cushion attached by hook-or-loop connectors and a recliner chair assembly. One would have been motivated to make such a modification in view of the suggestion in Prager that the adjustable lumbar cushion on the chair allows for lower back support for any user.

Response to Arguments

8. Applicant's arguments with respect to claims 1, 3, 4, and 6-11, as best understood, have been considered but are moot in view of the new grounds of rejection.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to cushion apparatuses:

U.S. Pat. No. 4,945,587 to Ferro

U.S. Pat. No. 5,275,463 to Rocha

U.S. Pat. No. 5,626,397 to Reid


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (703) 605-1216. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-

2168.



JE
December 3, 2003


PETER R. CROWN
PRIMARY EXAMINER